

No. 9/8/86-Lab/10359.—In pursuance of the provisions of Section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of Presiding Officer, Labour Court, Faridabad, in respect of the dispute between the workman and the management of M/s. Eicher Good Earth Limited, 59, N.I.T. Faridabad.

IN THE COURT OF SHRI A.S. CHALIA, PRESIDING OFFICER, LABOUR COURT, FARIDABAD

Reference No. 57 of 1985

Between

SHRI PARTAP SHARMA, C/O SHRI PARDEEP SHARMA, ADVOCATE, NISSAN HUT NO. 39, N.H. 5, N.I.T. FARIDABAD AND THE RESPONDENT MANAGEMENT OF M/S. EICHER GOOD EARTH LIMITED, 59, N.I.T., FARIDABAD

Present.—

Shri Pardeep Sharma for the workman.
Shri P.R. Sikka for the respondent management.

AWARD

This reference under Section 10(1)(c) of Industrial Disputes Act, 1947 (Act No. 14 of 1947) as amended from time to time and latest by Act No. 49 of 1984 (hereinafter referred as the said Act) was made to this Court by the State of Haryana (Department of Labour),—*vide* its endorsement No. 1D/FD 226-84/5442—47, dated 14th February, 1985 to adjudicate upon the dispute of service matter covered by Second Schedule under Section 7 of the said Act, arisen between Shri Partap Sharma, Workman and the respondent management of M/s. Eicher Good Earth Limited, 59, N.I.T. Faridabad. Accordingly, it has been registered as reference No. 57 of 1985.

2. Main facts of the case are that Shri Partap Singh was appointed on 1st May, 1983 as a Machinist by the respondent and his monthly wages were Rs. 510. The allegations are that his services were suddenly terminated on 1st August, 1984 without assigning any reason thereto and on the face of it the same is illegal, unjustified and against the provisions of Section 25-F of the said Act. Accordingly, request has been made to reinstate him into his job with full back wages and further with continuity of service.

3. On notice, the respondent appeared and filed the written statement. It has been contended that he was employed as a temporary workman at daily wages at Rs. 17 with effect from 15th June, 1983 to 31st January, 1984 and was paid off and then he had joined on 2nd April, 1984 and was again paid off on 31st May, 1984 and hereafter he had joined on 20th July, 1984 and then was paid off on 21st July, 1984. According to it he can not claim any right of reinstatement on the said job being a temporary workman of casual nature only. By way of rejoinder workman has repeated his claim as well as allegations also.

4. On the pleadings of the parties, my learned predecessor had framed the following issue on 7th May, 1985 :—

(i) As per reference ?

Shri Hari Mohan, Junior Personnel Officer of the respondent appeared as MW-1. On the other hand there is statement of Shri Partap Sharma as WW-1. Documentary evidence has also been led. I have heard the parties as represented above. My finding is as below :

5. **Issue No. 1.**—In this case the moot point to be determined is the long-lity of service of Partap Sharma. On one hand it has been claimed by him that he remained employed with the respondent with effect from 1st May, 1983 to 1st August, 1984 and as such is entitled for the protection of Section 25-F of the said Act. On the other hand the plea taken by the respondent is that he was purely a temporary casual workman and had worked for short period and on the face of it he is not entitled for any protection. During the course of arguments it has been canvassed that Partap Sharma had worked for more than 240 days as defined in Section 25-B of the said Act and his services could not be terminated without having a recourse of Section 25-F of the said Act. Let us see, whether period of his service had been of more than 240 days or not. Firstly, I shall refer to the documents produced by Shri Partap Sharma, Ex. W-1 is the photostat copy of E.S.I. Identify Card of this workman. Ex. W-2 and W-3 are further photostat copies of attendance cards for the month of May, 1984 and April, 1984. The most important document produced by him is Ex. W-4, Photostat copy of form No. 10 for the withdrawal of Provident Fund. Therein it is mentioned that he had been in the employment of the respondent with effect from 10th May, 1983 to 31st July, 1984. The form bears date of 10th March, 1985. Admittedly original was counter signed by the respondent certifying the particulars thereof as being correct. In other words it has been certified by the respondent that he was in its employment since May, 1983 to 31st July, 1984. If it is so then it is very easy for Partap Sharma to succeed in the case. Contrary to it reliance has been placed by the respondent, on Ex. M-1 application dated 5th May, 1983. According to the same he was appointed as a temporary machinist at Rs. 16 per day with effect from 10th May, 1983. Signatures A and B were put to Shri Partap Sharma and he has denied the same. Ex. M-2 is the appointment letter and again that was put to the workman who has denied his signatures thereon. Ex. M-3 is the photostat copy of attendance and wages of Partap Sharma as claimed by the respondent.

In my clear opinion, the documentary evidence led by the respondent does not lead anywhere since signatures of workman have not been proved thereon. On the other hand, there is no reason to discard the certificate issued by the respondent to the workman certifying that he was in its employment with effect from 10th May, 1983 to 31st July, 1984. In corroboration thereof statement of Partap Sharma is also to be read and that can be believed without any difficulty. In view of it there is no dispute to conclude that Shri Partap Sharma has served the respondent for more than 240 days and on the face of it he is entitled to be termed in continuous service of the respondent and if it is so then there is no dispute that his services were terminated against the principles of said Act. On behalf of the respondent, it has been contended that he has worked for short periods and is not entitled for any protection. Reliance has been placed on 1975-(1) Labour Journal Page 207; Crompton Engg. Co. (Madras) Pvt. Ltd. *versus* Labour Court and 1981-Vol. 14 Labour and Industrial Cases page 719 Subash Purohit and others *versus* The State of Rajasthan and others. These two cases would have led support to the contention of the respondent, had this workman not worked for more than 240 days in the employment of the respondent. From the side of the workman it has been contended that it makes hardly any difference if he was a temporary and a casual workman and it is the period of service which is to be counted to determine the validity of termination order. Support is being sought from 1985-(2) Epitomised Legal Judgements (Labour and service) page 163 Prem Narain and others *versus* Assistant Personnel Officer and others and 1984 (1) Epitomised Legal Judgements (Labour) page 389 Kapurthala Central Co-operative Banks Ltd., *versus* Labour Court, Jalandhar. In my considered opinion both the cases support the claim of Shri Partap Sharma. In case he was in continuous service of more than one year within year of his termination, on the face of it was a bad one and as such the same is hereby revoked.

6. As a result of the above discussion I accept the reference and pass an award quashing the order of termination and reinstating him into his job with full back wages and further with continuity of service.

Dated the 30th October, 1986.

A. S. CHALIA,

Presiding Officer,
Labour Court, Faridabad.

Endorsement No. 2697, dated the 11th November, 1986

Forwarded (four copies) to the Commissioner and Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh as required under Section 15 of I.D. Act.

A. S. CHALIA,

Presiding Officer,
Labour Court, Faridabad.

No. 9/8/86-6 Lab/10360.—In pursuance of the provisions of Section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947) the Governor of Haryana is pleased to publish the following award of Presiding Officer, Labour Court, Faridabad in respect of the dispute between the workman and the management of M/s Jai Co. Steel Fasteners Pvt. Ltd., 269, Sector 24, Faridabad.

IN THE COURT OF SHRI A.S. CHALIA, PRESIDING OFFICER, LABOUR COURT, FARIDABAD

Reference No. 152 of 1985

between

SHRI BIJENDER SINGH, WORKMAN, C/O SHRI PARDEEP SHARMA, ADVOCATE, NISSEN HUT
39, NH NO. 5, NIT, FARIDABAD AND THE RESPONDENT-MANAGEMENT OF M/S. JAICO
STEEL FASTENERS PVT. LTD., 269, SECTOR 24, FARIDABAD.

Present:—

Shri Pardeep Sharma for the workman.

Shri H.R. Dua for the respondent management.

AWARD

This reference under Section 10(1)(c) of Industrial Disputes Act, 1947 (Act No. 14 of 1947) as amended from time to time and latest by Act No. 49 of 1984 (hereinafter referred as the said Act) was made to this Court by the State of Haryana (Department of Labour),—vide its endorsement No. ID/FD/104-84/25786—91, dated 24th July, 1984, to adjudicate upon the dispute of service matter covered by Second Schedule Under Section 7 of the said Act, arisen between Shri Bijender Singh, workman and the respondent management of M/s Jaico Steel-Fasteners Pvt. 269, Sector 24, Faridabad. Accordingly, it has been registered as reference No. 152 of 1984.

2. Main facts of the case are that Shri Bijender Singh was appointed by the respondent on 7th of June, 1977 as a trainee at monthly wages of Rs. 225 and after the completion of the training he was appointed as a supervisor in the Heat Treatment Department. It has been claimed by him that he had worked hard and respondent had entrusted with very complicated jobs requiring a great deal of manual involvement and annual increments were duly sanctioned to him and,—vide Ex. W-1/M-3 his wages were fixed at Rs. 485/- per month and that on 11th November, 1983,—vide Ex. M-5 his pay was increased to Rs 530 per month. However to his surprise his services were terminated on 7th April, 1984,—vide Ex. M-8 without assigning any reason. His allegations are that order of termination is un-justified, illegal and against the principles of natural justice.

3. Notice was issued to the respondent and Bijender Singh repeated his claims as well as allegations as per claim Statement filed by him. Written Statement was filed by the respondent. Preliminary objection has been taken to the effect that he was working as a supervisor and his salary was more than Rs. 500 per month and as such he was not a workman as defined in the said Act and as such the reference is bad and accordingly he dismissed. On merits it has been pointed out that he had applied on 24th September, 1983,—vide Ex. M-1 keeping in view his circumstances, his pay was re-fixed at Rs 530 per month and he was required to work in the Heat Treatment Department. It has been alleged that thereafter he had not worked up to the expectation and as a matter of fact his behaviour was indecent and he had pick up quarrel with others and ultimately his services had to be terminated on 6th April, 1984. It is contended that respondent was not under obligation to serve any charge-sheet against him since he was drawing more than Rs. 500 p.m. in supervisory capacity. By way of replication workman repeated his claim as well as allegations. It has been pointed out by him that despite of his designation being of a supervisor he had to work as a workman and now he is covered under the definition of a workman as defined in the amended Act and on the face of it the said reference is tenable. According to him he had remained sick for 9 months and his salary was refixed at Rs. 530 per month with effect from 1st November, 1983. It has been emphasized by him since 1st January, 1978 he had been working in the Heat Treatment Department as a supervisor and he had to perform duties of a ordinary workman.

4. On the pleadings of the parties, my learned predecessor had framed the following issues on 27th September, 1984.

- (i) Whether the claimant is not a workman as defined under I.D. Act ?
- (ii) As per reference ?

From the side of the respondent its manager Shri Parmod Kumar Kora has been examined. On the other hand there is statement of Shri Bijender Singh. Documentary evidence have also been tendered. I have heard the parties as represented above. My findings issuewise are as below:—

5. **Issue No. 1.**—In between the parties there is no dispute that Bijender Singh was appointed on 7th June, 1977 as a Trainee at monthly pay of Rs. 225. It is also not disputed that,—vide Ex. W-1/M-3, dated 28th August, 1982, his pay was refixed at Rs. 485 per month. It is also not disputed that,—vide Ex. M-5, dated 11th November, 1983 his pay was refixed at Rs. 530/- per month.

6. The real controversy in between the parties is whether he had been a workman as defined in the said Act. On one hand it has been claimed that he was a workman while on the other side it has been pleaded that he was a supervisor drawing more than Rs. 500/- per month and as such not entitled to be termed as a workman. To solve this point in dispute it is necessary to refer to the documentary evidence about the nature of duties of Shri Bijender Singh on the file. No letter of appointment has been produced by either of the parties and as such I am not in a position to reference to the terms and conditions of the appointment. However, Ex. W-1, dated 28th August, 1982 could be that one held since,—vide the same his salary was refixed at Rs. 485 per month. Along with it list of the duties is also enclosed,—vide Ex. W-2. This document had been placed on the file by Shri Bijender Singh and contentions thereof have been admitted as correct by the respondent-management as MW-1. There are as many as 9 items all jobs for the supervisor. After going through the same I am of opinion that such duties involved manual work. At the costs of repetition it is pointed out that these duties are in the Heat Treatment Department, which Bijender Singh admittedly had made application Ex. M-1 on 24th September, 1983 that speaks itself about the adverse effect of the Heat Treatment Department and on account he had requested for changing his department. But he was not accommodated and he had to work in that very Heat Treatment Department Ex. M-2 explanation dated 14th September, 1979 appears to be a proof of casual involvement of supervisor in the work. It is the manager who had alleged that,—vide Ex. M-4 draw material valued of Rs. 3,000 had been rendered useless due to lack of his supervision. Ex. M-6 is also another example where material was not properly processed by this supervisor and after that he had feel sorry. There is statement of Bijender Singh also, who has stated on oath that he had to fit and set die of wire drawing machine and to check the size of wire of micro-meter and then only machine had to be started. It has also been stated by him that this machine was controlled by him only and a helper used to be there to remove wire core from the machine when it was completed by him. During cross-examination, it has been admitted by him that due to sickness he had become very sick and on that account he had requested for the change of his department. Shri Parmod Kumar Kora, respondent's manager has stated that there was overall supervision of his. It has been conceded by him that Shri Bijender Singh was required to set precision instruments to test the products. It is duly gathered from the above original coupled with documentary that he was required to do manual work also, in addition to his supervisory duties.

7. Shri Dua on behalf of the respondent has contended that admittedly he was drawing Rs. 530 per month on 7th April, 1984 when his services were terminated and as such he is not entitled to be termed as a workman as defined as in Section 2(s) of the said Act. On the other hand Shri Sharma has replied that definition of workman was re-defined and enlarged,—vide Act No. 46 of 1982 by way of which wage range of Rs. 500 was extended to Rs. 1,500 per mensem. Shri Dua intervene to say that the said amendment was enforced with effect from 21st August, 1984 while in this case service were terminated on 7th April, 1984 and as such old definition of workman would be applicable. I fear that it is not correct. This reference was made by the Haryana Government in July, 1984 and since then it has been pending disposal. The amendment introduced into the Act is beneficial to the workman and on the face of it they are entitled for the same. The object of the Act is to provide relief to the Labour Class and to achieve that end liberal approach is to be adopted. It has been also said that pragmatic and non-pragmatic approach must be adopted since this Act is a progressive piece of legislation.

8. Now, reverting back to the duties of a supervisor reference is to be made to the amended definition of a workman and that itself speaks in favour of the terminated employees. Shri Sharma has referred AIR-1985-(S.C.) page 995, *Arkal Govind Raj Rao Vs. Cibra Geigy of India Ltd., Bombay*. In that case there was dispute about the definition of a workman. The applicant was a Stenographer/Accountant and he was appointed as a Assistant. From the side of the respondent objection was taken that he was not a workman and as a matter of fact he was a supervisor. It was held that he was a workman and not a supervisor. In this case there is reference to S.K. Verma *versus* Mehesh Chandra, AIR-1984(S.C.) 1962. In this case there was a dispute about a Development Officer of L.I.C. and it was held that he was a workman though he had to act in the field to get work from other employees. Reliance has also been placed on 1982-Vol. 15 Labour and Industrial Cases, page 307; *Titaghur Paper Mills Company Ltd. versus Industrial Tribunal*. In this case there was dispute about supervisor staff and it was held that they were workers as defined in the said Act though they had to get work from others. Under these circumstances of the case I have no hesitation in holding that he is workman as defined under the said Act. This issue is decided against the respondent in favour of the workman.

9. **Issue No. II.**—It does not involve much labour. It has been conceded from the side of the respondent in its written Statement that no retrenchment Compensation was paid to this workman. His accounts have also not been produced. It means that order Ex. M-8, dated 6th April, 1984 was passed in violation of Section 25-F of the said Act and this is accordingly quashed. The issue is decided against the respondent.

10. As a result of the above discussions, it is held that Bijender Sinah was a workman and his services were terminated in violation of Section 25-F of the said Act, and he is hereby reinstated into his job with full back wages and other with continuity of service.

The award is given accordingly.

Dated 29th October, 1986.

A. S. CHALIA,
Presiding Officer,
Labour Court, Faridabad.

Endst. No. 2698, dated 11th November, 1986.

Forwarded (four copies), to the Commissioner and Secretary to Government, Haryana. Labour and Employment Department, Chandigarh, as required under Section 15 of the I.D. Act.

A. S. CHALIA,
Presiding Officer,
Labour Court, Faridabad.

No. 9/8/86-Lab./10361.—In pursuance of the provisions of Section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of Presiding Officer, Labour Court, Faridabad in respect of the dispute between the Workman and the management of M/S Roof Rite Pvt. Ltd., Gurgaon.

IN THE COURT OF SHRI A.S. CHALIA, PRESIDING OFFICER, LABOUR COURT,
FARIDABAD

Reference Nos. 300 of 1983,
299 of 1983 and 298 of 1983

between

SHRI KRISHAN, RAJ SINGH AND PARTAP SINGH, WORKMEN AND THE RESPONDENT
MANAGEMENT OF M/S ROOF RITE PVT. LTD., GURGAON

Present.—

Shri Mahavir Tyagi, for the workmen.

Shri S.K. Goswami, for the respondent-management.

AWARD

These references under Section 10(1) C of Industrial Disputes Act, 1947 (Act No. 14 of 1947) as amended from time to time and latest by Act No. 49 of 1984 (hereinafter referred as the said Act) were made to this Court by the State of Haryana (Department of Labour),—*vide* its endorsements No. ID/GGN/51819—24, dated the 26th September, 1983, ID/GGN/51812—17, dated the 26th September, 1983, ID GGN/51805—16, dated the 26th September, 1983 to adjudicate upon the disputes of service matters covered by Second Schedule under section 7 of the said Act arisen between Shri Raj Singh, Krishan and Partap Singh, respectively workmen and the respondent-management of M/s Roof Rite Pvt. Ltd, Gurgaon. The same were registered as Reference Nos. 298, 299 and 300 respectively of 1983.

2. It is necessary to narrate in nutt shell the facts of the said three cases. To start with the claim of Raj Singh is that he was appointed on 9th February, 1970 as a helper @ Rs. 358 per month and his services were illegally terminated on 4th June, 1983. On the other hand the claim of respondent is that as a matter of fact he was appointed as a labourer on 1st September, 1980 and he was dismissed from his service on 4th June, 1983. Shri Krishan claim's that he was appointed as a helper on 1st August, 1969 @ Rs. 358 per month and his services were also illegally terminated on 4th June, 1983. The contention of respondent is that this Krishan was as a matter of fact appointed as a labourer only. The case of Partap Singh is that he was appointed on 6th May, 1970 as a T-Supervisor at monthly pay of Rs. 390 and again his services were illegally terminated on 4th June, 1983. About him it has been stated by the respondent that he was appointed on 2nd June, 1980 as a labourer.

3. On behalf of the respondent three written Statements have been filed, one in each case and the same are mostly on the same lines and summary thereof would serve the purpose for the disposal of the cases. About the claim of Raj Singh and Krishan, it has been pointed out that these two references have become infructuous since parties had entered into settlement on 26th December, 1983 and due to that no further proceedings are maintainable. It is claimed that both were not permanent employee of the respondent. According to it charge-sheet dated 4th January, 1983 was served upon them. In those matters valid and proper enquiry was held into the matter and on that basis they were dismissed from service on 4th June, 1983. It is alleged that they were guilty of serious mis-conduct and charges against them stood proved and they have been rightly and validly dismissed from service. So far as Partap Singh is concerned, it has been stated that parties had entered into settlement on 30th March, 1984 and his reference is also not maintainable. Other contentions referred above also been repeated in his case.

4. By way of rejoinders and replications filed by Raj Singh, Krishan and Partap Singh they have repeated their claims as well as allegations also. It has been emphatically denied by them that they ever entered into settlement with the respondent. About their matters, they have come forward to contend that Shri A. D. Kolhatkar was appointed as enquiry officer by the respondent against them and after holding the enquiry into the matters he had submitted his reports in their favour but respondent was not satisfied with the same and as such another Enquiry Officer was appointed against them. According to them the second enquiry was bad in law and they had decided not to Cooperate with the second Enquiry Officer and to that effect they are within their rights. Further according to them there was a workers union and they were members thereof and on that account they have been victimised and ousted from jobs.

5. On the aforesaid pleadings of the parties my learned predecessor had framed the following issues on 24th August, 1984 :—

- (1) Whether workmen have settled their dispute with the respondent ?
- (2) As per references ?

The following additional issue was also framed on 26th September, 1984 "whether domestic enquiry is fair and proper".

6. These three references were also consolidated by my learned predecessor,—*vide* his order dated the 21st September, 1984. Proceedings have been recorded in reference No. 298 of Raj Singh and that is to be read in other two cases of S/Shri Krishan and Partap Singh also.

7. On behalf of the respondent evidence has been led to prove the proper enquiry and settlements also. Firstly there is statement of Shri S.K. Goswami, who was second Enquiry Officer against these three workers. He is representative of the respondent also in these three cases. He has stated about his report Exhibit M-110 dated the 30th May, 1983. Ravinder Jit Singh next witness is works Manager of the respondent. Harbans Singh Office Superintendent appeared as MW-3. Shri Shardha Nand is General Secretary of AITUC of District Gurgaon. He used to be representative of these three workers. He has stated that about settlements MW-4/1 about case of Raj Singh Exhibit M-4/6 (about the case of Krishan), and Exhibit MW-4/5 about the case of Partap Singh. He has his own version about the same since on one hand it has been stated by him that the same bears his signatures even on revenue stamps and on the other hand he has stated that he does not remember whether any payment was ever made to these three workers or not. Then there is statement of Clerk of Labour Office, Gurgaon. He has stated about copies Exhibit MW-5/1 to MW-5/4. Lastly there is statement of Shri G.S. Ghuman, Managing Director of the respondent. It has been stated by him that he has settled the disputes with the

workers,—vide three settlement referred above. On the other hand the workers have also examined 3 witnesses. Firstly, there is statement of Miss Sayita. It has been stated by her that she never remained employed in the respondent factory. Shri A.D. Kolhatkar has been examined as WW-2. It has been stated by him that he was appointed as an Enquiry Officer by the respondent against these workers and he had held enquiry against them and had accordingly submitted the reports. In other words he has deposed about report Exhibit M-18, dated the 7th February, 1983. He had submitted report in favour of the workmen. Shri Shardha Nand already examined as MW-4 has also been examined by them as WW-3 and this time he has deposed about a new story. It has been stated by him on oath that there was inauguration of his new house and he was drunk and at that time son of respondents Proprietor had obtained his signatures on 5/6 papers and he was not aware about the contents thereof. It has also been stated by him that when the function was over the respondent's persons had paid Rs. 400/500 to his wife. Raj Singh, Krishan and Partap Singh have also appeared as WW-5, WW-6, WW-4 respectively.

8. I have heard at length representatives of the parties and have also carefully gone through the files. The findings issuewise are as follows :—

9. Issue No. 1.—Shri S.K. Goswami Representative of respondent has strenuously contended that these references are not maintainable in view of settlement MW-4/1, MW-4/6, dated the 26th December, 1983 and MW-4/5, dated the 30th March, 1984, since according to the same the workers had settled their pending disputes and had obtained towards full and final settlement. On behalf of the workers it has been replied by Shri Mahavir Tyagi that these workers never entered into alleged settlement and no amount was ever paid to them and as a matter of fact fraud is being played by the respondent upon the poor workers to deprive them of their legal rights of reinstatement and arrears of wages. On the face of it, this matter is of controversial nature and decision thereof would determine in my opinion the fate of the cases.

10. These references were registered on 30th September, 1983 and there are endorsement to the effect that notice to the parties be issued for 12th May, 1984. On behalf of the respondent two applications were made on 5th April, 1984 to the effect that dispute of Shri Raj Singh and Krishan were settled on 26th December, 1983 and along with the applications photostat copies of alleged settlements and receipts were attached. There is endorsement on the reference of Partap Singh's service matter to the effect that notice be issued to the parties for 19th May, 1984, and respondent was proceeded *ex parte* on 26th May, 1984 and on its application that was set aside and written statement was filed on 27th July, 1984. The plea was taken that matter was settled on 30th March, 1984 and Partap Singh's alleged settlement as well as receipt were produced on the file.

11. Shri Goswami has contended that Shri Shardha Nand was Authorised Representative of these workers and he was duly authorised to settle the same on their behalf and as such the settlements are binding upon the workers. In support of these contentions he has relied upon Ex. MW-5/1 dated 5th June, 1983 demand notice of Raj Singh, Ex. MW-4/2 letter of authority in favour of Shardha Nand, claim statement Ex. MW-4/3 dated 26th May, 1984 (in case of Shri Raj Singh) Ex. MW-6/1 demand notice of Krishan, Ex. MW-6/2 letter of authority in case of Krishan and letter of authority Ex. WW-4/1 Claim Statement Ex. WW-4/2 in case of Shri Partap Singh to the effect that Shri Shardha Nand was fully authorised to negotiate and settle the matter. These documents were put to Shri Shardha Nand as WW-4 and Raj Singh, Krishan and Partap Singh also. There is no dispute that Shri Shardha Nand was representative of these three workers, and as a matter of fact it is he who had sent the demand notices of the workers to the respondent and had filed claim statements on their behalf.

12. Now a simple question arises whether Shri Shardha Nand has ever settled the disputes with the respondent. If it is held that he has settled the same then there should be no dispute that workmen are bound to the faith. In case it is held that he did not enter into the settlement then these poor workers are entitled to gain. Shri Goswami has replied on 1976- LIC page 546 Madras Coop. Society Vs. O. Ramalingam and others. It has been held therein that compromise entered into by a counsel is a valid one. There is no dispute about this proposition of law. In the case of Raj Singh and Krishan, the alleged settlements are Ex. MW-4/1 and Ex. MW-4/6 dated 26th December, 1983. As far as case of Partap Singh is concerned the alleged settlement is Ex. MW-4/5 dated 30th March, 1984. The same were put to the workers and they had denied on oath their signatures as well as thumb-impression also. Upon this respondent appeared to be agitated and at its request their standard impressions and signatures were obtained and the same are on the files. It was perhaps done to facilitate the respondent to get compared the disputed ones with the admitted samples. But the respondent could not have courage to examine any expert for comparison and on the face of it this circumstances is to be taken into consideration against the respondent. Partap Singh as WW-4 has denied on oath his signatures on Ex. MW-4/5. Shri Raj Singh WW-5 has stated that he is a illit. rate person and there are his signatures on Ex. MW-4/1 and he had not settled his dispute with the respondent. No question was put to Shri Krishan WW-6 about his signatures on alleged settlement Ex. MW-4/6. After going through the alleged settlement referred above it becomes quite clear that respondent never alleged that payment was made to these workers. No such contention has also been put to these three workers when they deposed on oath. Shri Dalip Singh Gumman, Managing Director of the respondent has stated on oath that payment was made to Shri Shardha Nand. He has nowhere stated that any payment was made to these workers. There is no other evidence to the effect that any payment was made to the workers. Under these circumstances it is concluded that workers never executed alleged settlement and no payment has ever been made by the respondent to them.

13. Now there is controversy about the payment of amount to Shri Shardha Nand, who admittedly was representative of the workers and later on he was replaced by Shri Mahavir Tyagi as their Representative. It is pointed out that in the three written statements it is not mentioned that payment was made to Shri Shardha Nand

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There is no dispute that Shri Shardha Nand has admitted on oath as MW-4 his signatures at Ex. MW-4/1, Ex. MW-4/5, MW-4/6 and revenue Stamps also. It has also been admitted by him that writing about the receipt of payment by him are also in his hand and signatures. Shri Shardha Nand is an old person of grey hair and he must be an experienced unionist and on that account there is no reason to dis-believe his statement to the effect that endorsements about payment are in his hand. Notwithstanding the above he has tried to avoid the truth since it has been stated by him that he does not remember whether payment was made to the workers or not. In my opinion, he has been examined by the respondent to prove that he had received the payment and nothing more. During cross-examination he had to burst to the effect that he is not aware about contents of the alleged settlements. His this statement is dated 18th. January, 1985. On behalf of the workmen he was examined as WW-3 on 16th September, 1985. In my opinion he should not have been allowed to re-appear since he had already been examined by the parties. His this Second Statement is of damaging nature only. It has been stated by him that there was inauguration of his house and he was drunk and then his signatures were obtained by the respondent's side and after the function Rs. 400/500 were paid by the respondent's side to his wife. He has tried to malign the Labour Court also by deposing that he had obtained signatures of workers on blank papers and the same were in the files and these were not traceable when he had checked the file in the office of Labour Court, Faridabad. He has also come forward to depose that he had lodged report with the police and made complaint also, but he has not produced any copy of the complaint on the file. Shri Gumman, Managing Director of the respondent has also not stated that he had made the payment to the workers and as such his allegations about the payment are confined upto to Shri Shardha Nand only. I am afraid that conduct of Shri Shardha Nand has not been above board at least in these cases since, he had bungled with the interest of the workers and mis-appropriated the amount paid to him by the respondent. In my opinion, he never disclosed the matter to the poor workers who had reposed their confidence in him. Simply on the basis of printed authority letters these poor workers would not suffer for the wrongful acts of their representative. It is a matter of routine that representatives and legal practitioners obtain signatures of clients on printed forms since it is a formative and litigants in my opinion, must not suffer. However, every case has its own facts to tell and there could be circumstances when even acts of there binding on the parties. In these cases, the workers were never approached by the respondent side for settlement and they had got in league with their representative simply to deprive of there legal rights. There was no harm for the respondent to talk directly to the workers and discuss the matter and they would have openly admitted the offer or rejected the same. In these cases Shri Shardha Nand was that once removed by the workers when they had come to know about his wrongful acts about their cases and Shri M. Tyagi was appointed as their representative. As a result of the above discussions I decide the issue of settlement against the respondent to the effect that workers have never settled the same.

14. **Additional Issue.**—There has been issue about proper and fair enquiry also. In between the parties, there is no dispute that Shri A.D. Kolhatkar, Advocate was appointed as an Enquiry Officer against these three workers and he had submitted his report dated 7th February, 1983 in their favour and against the respondent. Being dis-satisfied with the same the respondent then had appointed Shri S.K. Goswami, second Enquiry Officer against them and he had to proceed *ex parte* against them since workers had not appeared against him and he had submitted his report dated 30th May, 1983 against them, and on that basis these three workers were dismissed,—*vide* order dated 4th June, 1983. The simple question arises whether second Enquiry Officer could be appointed against them when Shri A.D. Kolhatkar had already submitted his report in their favour. There is established procedure as how to determine a fact. In my opinion appointment of second Enquiry Officer was un-called for in these cases. Shri Goswami cannot convince as to how his appointment as second Enquiry Officer was justified in these cases. It is not the sweet will of the management to go on appointing Enquiry Officers one after the another simply to get favourable reports to them and against the working class and if such a procedure is allowed then there would be no end to the matters. Unfortunately there is fight of a have and not with a have and poor against the rich and scale must be inclined towards the poor and favourable circumstances must be there to create a faith in his mind to get justice. In case the management was not satisfied with the report of Shri Kolhatkar then they should have adopted legal procedure in getting the same quashed. On the fact of it there is no reason to reject the report to Shri A.D. Kolhatkar which is favourable to the workers and give preference to the report of Shri Goswami simply on the ground that it is against the workers and in favour of the respondent-management. In this manner enquiry conducted by Shri Goswami is not according to the principles of natural justice and as such that report is hereby ignored. There is no reason to differ with the findings recorded by Shri A.D. Kolhatkar which has owned the report on oath. As discussed above this issue is also decided against the respondent and in favour of the workers.

15. I have excluded out of circumstances the alleged settlement as well as enquiry report submitted by Shri Goswami, as far as these workers are concerned. If it is so the order of termination is bad as it is against the requirement of 25-F of said Act. In the end I accept the references and reinstate these three workers with full back wages and further with continuity of their services.

The 16th October, 1986.

A.S. CHALIA,
Presiding Officer,
Labour Court, Faridabad.

Endorsement No. 2699, dated 11th November, 1986.

Forwarded (four copies), to the Commissioner and Secretary to Government, Haryana, Labour and Employment Department, Chandigarh, as required under section of I.D. Act.

A.S. CHALIA,
Presiding Officer,
Labour Court, Faridabad.